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February 7, 2001

David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0500

Re: *Petition of Adelpia Business Solutions of Tennessee, L.P. and AVR, L.P.  
d/b/a Hyperion of Tennessee, L.P., Inc. for Arbitration*  
Docket No. 00-00927

Dear David:

I have enclosed one original and thirteen copies of the Rebuttal Testimony of Timothy J. Gates filed on behalf of Adelpia Business Solutions, L.P. and AVR, L.P. d/b/a Hyperion of Tennessee L.P. in the above-captioned proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

*Henry Walker*  
By: *by WSM w/permission*  
Henry Walker

HW/nl  
Enclosure  
cc: Parties

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

Petition of	)	
	)	
ADELPHIA BUSINESS SOLUTIONS,	)	
OF TENNESSEE, LP and AVR, L.P. d/b/a	)	
HYPERION OF TENNESSEE, L.P., INC.	)	Docket No. 00-00927
For Arbitration with BellSouth	)	
Telecommunications, Inc. Pursuant to	)	
Section 252(b) of the Communications	)	
Act of 1934, as amended by the	)	
Telecommunications Act of 1996	)	

**REBUTTAL TESTIMONY**  
**OF TIMOTHY J. GATES**

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Its Attorneys

Dated: February 7, 2001

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

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ADELPHIA BUSINESS SOLUTIONS,	)	
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Telecommunications Act of 1996	)	

**REBUTTAL TESTIMONY  
OF TIMOTHY J GATES**

- 1   **Q.    PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE**  
2       **RECORD.**
- 3   A.   My name is Timothy J Gates. My business address is 15712 W. 72<sup>nd</sup> Circle,  
4       Arvada, Colorado 80007.
- 5   **Q.    BY WHOM ARE YOU EMPLOYED?**
- 6   A.   I am employed by QSI Consulting, Inc. ("QSI").
- 7   **Q.    ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT TESTIMONY IN**  
8       **THIS PROCEEDING ON BEHALF OF ADELPHIA BUSINESS SOLUTIONS OF**  
9       **TENNESSEE, LP ("ADELPHIA")?**
- 10  A.   Yes, I am.
- 11  **Q.    WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

1 A. The purpose of my testimony is to rebut certain statements made by BellSouth  
2 witness John A. Ruscilli in his direct testimony filed in this Docket on January 31,  
3 2001, with regard to Issue 2.

4 **Q. PLEASE DESCRIBE THE ISSUES SUBSUMED WITHIN ISSUE 2?**

5 A. Issue 2 is set forth as follows:

6 Issue 2: (Attachment 3, Sections 6.1.9 and 6.1.9.1)

7 A. Should the parties be obligated to compensate each other for calls  
8 to numbers with NXX codes associated with the same local calling  
9 area?

10 B. Should BellSouth be able to charge originating access to Adelphia  
11 on all calls going to a particular NXX code based upon the location  
12 of any one customer using the NXX code?

13 **Q. IS BELL SOUTH SUGGESTING THAT ADELPHIA CANNOT USE NXX CODES**  
14 **IN THE MANNER DESCRIBED IN THIS PROCEEDING?**

15 A. No. Mr. Ruscilli does not suggest that Adelphia is doing anything wrong or that  
16 Adelphia is restricted in assigning NXX codes. (Ruscilli Direct at 4 and 7)  
17 Adelphia is not violating any laws, rules or even industry conventions in assigning  
18 NXX codes. Indeed, this functionality has been provided to consumers for  
19 decades in various formats. Some of these different offerings are discussed later  
20 in my testimony.

1 **Q. IS THE FEATURE PROVIDED WITH VIRTUAL NXX A SERVICE THAT NEEDS**  
2 **TO BE TARIFFED OR OTHERWISE APPROVED BY THE TENNESSEE**  
3 **REGULATORY AUTHORITY (“TRA”)?**

4 A. No. Virtual NXX is not a service per se. It is a network functionality. The  
5 switches compare NXX codes and route the calls accordingly. Assigning a NXX  
6 code in another exchange simply means that the call gets routed to that  
7 exchange.

8 **Q. IF BELL SOUTH DOES NOT DISPUTE THE MANNER IN WHICH THE NXX**  
9 **CODES ARE ASSIGNED, AND THE SERVICE IS NOT PRECLUDED BY**  
10 **ORDERS OF THE TRA OR THE FCC, WHAT IS THE DISPUTE IN THIS**  
11 **CASE?**

12 A. BellSouth and Adelphia disagree on the definition of a local versus a toll call and  
13 the appropriate compensation for calls in which NXX codes are assigned to  
14 customers with a physical presence outside the local calling area normally  
15 associated with the NXX.

16 **Q. WHAT IS BELL SOUTH’S POSITION ON RECIPROCAL COMPENSATION**  
17 **FOR THESE CALLS?**

18 A. BellSouth argues that it “...should only pay reciprocal compensation on calls that  
19 originate and terminate within the same local calling area.” (Ruscilli Direct at 5)

20 **Q. IS THIS POSITION CONSISTENT WITH THE WAY BELL SOUTH TREATS**  
21 **OTHER SERVICES THAT ARE VERY SIMILAR TO THE VIRTUAL NXX**  
22 **OFFERING OF ADELPHIA?**

1 A. No. For instance, the Adelphia offering is a competitive response to the foreign  
2 exchange ("FX") service of BellSouth. Both services provide the customer with a  
3 virtual presence in an exchange where the customer currently does not have a  
4 physical presence. (Direct of Ruscilli at 11)

5 **Q. DOES BELLSOUTH CHARGE COMPETITIVE LOCAL EXCHANGE**  
6 **CARRIERS ("CLECS") LIKE ADELPHIA, RECIPROCAL COMPENSATION**  
7 **WHEN A CLEC CUSTOMER MAKES A CALL TO THE BELLSOUTH FX**  
8 **CUSTOMER?**

9 A. Yes, it does. (Id.) BellSouth also provides other services, such as Remote Call  
10 Forwarding and Extended Reach Service that provide a similar functionality.  
11 BellSouth charges CLECs reciprocal compensation for these services as well.  
12 As such, it is completely inconsistent for BellSouth to deny reciprocal  
13 compensation to Adelphia when Adelphia terminates BellSouth calls to one of its  
14 customers.

15 **Q. IF BELLSOUTH IS CHARGING CLECS RECIPROCAL COMPENSATION FOR**  
16 **CALLS TO FX, REMOTE CALL FORWARDING AND EXTENDED REACH**  
17 **CUSTOMERS, DOES THAT MEAN BELLSOUTH CONSIDERS THESE CALLS**  
18 **TO BE LOCAL CALLS FOR PURPOSES OF RECIPROCAL**  
19 **COMPENSATION?**

20 A. Yes. These examples expose the inconsistent nature of BellSouth's position in  
21 this case. BellSouth cannot have it both ways; it cannot charge CLECs  
22 reciprocal compensation for such calls and then deny the same compensation to  
23 CLECs when CLECs terminate calls for BellSouth.

1 **Q. MR. RUSCILLI NOTES IN HIS TESTIMONY AT PAGE 11 THAT BELL SOUTH**  
2 **IS ONLY PROVIDING A FEW THOUSAND FX LINES IN TENNESSEE. IS**  
3 **THAT PERTINENT FOR DETERMINING WHETHER RECIPROCAL**  
4 **COMPENSATION SHOULD BE PAID?**

5 A. Not at all. Even if there were only one FX line in Tennessee, BellSouth would  
6 still be justified in charging reciprocal compensation to CLECs for calls originated  
7 by CLEC customers and terminated by BellSouth. Consistent with that  
8 argument, CLECs are entitled to reciprocal compensation for terminating calls  
9 originated by BellSouth customers, regardless of the number of calls. There is  
10 no change in responsibility in the FCC's Reciprocal Compensation Rules (FCC  
11 Rule 51.703) based upon the number of calls, lines or other parameters.

12 **Q. MR. RUSCILLI STATES AT PAGE 4 OF HIS DIRECT THAT IF A CALL**  
13 **ORIGINATES IN ONE LOCAL CALLING AREA AND TERMINATES IN A**  
14 **DIFFERENT LOCAL CALLING AREA, THAT THE CALL IS NOT A LOCAL**  
15 **CALL AND BELL SOUTH IS NOT REQUIRED TO PAY RECIPROCAL**  
16 **COMPENSATION. PLEASE COMMENT.**

17 A. As I noted above, there are many examples of calls that originate in one local  
18 calling area and physically terminate in a different local calling area for which  
19 BellSouth is already paying reciprocal compensation. In addition to the calls I  
20 noted above, there are extended area service calls, Metro Area Calling calls, etc.  
21 There are also interstate calls that are treated as local calls for purposes of  
22 reciprocal compensation.

1 **Q. YOU MENTIONED SEVERAL DIFFERENT TYPES OF INTEREXCHANGE**  
2 **CALLS THAT ARE TREATED AS LOCAL FOR PURPOSES OF RECIPROCAL**  
3 **COMPENSATION. WHAT ARE METRO AREA CALLING CALLS AND HOW**  
4 **ARE THEY TREATED FOR RECIPROCAL COMPENSATION PURPOSES?**

5 A. Metro Area Calling ("MAC") occurs in the four major metropolitan areas of  
6 Tennessee. For instance, MAC Calling is available in Knoxville, Nashville,  
7 Memphis and Chattanooga. Let me provide an example of how MAC calling  
8 works. If I lived in Nashville, I would have local calling within the county in which  
9 I reside and within all counties that are immediately adjacent to (contiguous to)  
10 my county. All of these calls – even though they cross what have historically  
11 been considered exchange boundaries – are local calls. As such, reciprocal  
12 compensation would apply when a carrier terminates these calls for another  
13 carrier.

14 **Q. YOU MENTIONED THAT SOME INTERSTATE CALLS ARE LOCAL CALLS**  
15 **FOR PURPOSES OF RECIPROCAL COMPENSATION. PLEASE EXPLAIN.**

16 A. There are many areas in the United States that have communities of interest that  
17 cross state boundaries. In Tennessee, for example, calls to and from Memphis,  
18 Tennessee and West Memphis, Arkansas are local calls. Another example is  
19 Bristol. The state line goes right through the middle of Bristol, so there are many  
20 local calls that go between Tennessee and Virginia that are actually interstate.  
21 All of these calls would be treated as local calls for purposes of reciprocal  
22 compensation.



1 **Q. ARE ALL OF THESE CALL TYPES – FX, EAS, REMOTE CALL**  
2 **FORWARDING, EXTENDED REACH SERVICE, MAC CALLING, AND**  
3 **CERTAIN INTERSTATE CALLING AREAS – CURRENTLY TREATED AS**  
4 **LOCAL FOR PURPOSES OF RECIPROCAL COMPENSATION BY**  
5 **BELLSOUTH?**

6 A. Yes.

7 **Q. WOULD IT BE INCONSISTENT AND ANTICOMPETITIVE TO TREAT**  
8 **VIRTUAL NXX CALLS ANY DIFFERENTLY THAN THE OTHER LOCAL**  
9 **CALLS YOU DISCUSSED ABOVE?**

10 A. Yes, it would.

11 **Q. AT PAGE 5 OF HIS TESTIMONY, MR. RUSCILLI ENGAGES IN A**  
12 **DISCUSSION REGARDING THE IDENTIFICATION OF VIRTUAL NXX AND**  
13 **OTHER LOCAL NUMBERS. WOULD YOU PLEASE COMMENT ON HIS**  
14 **DISCOURSE?**

15 A. Yes. Mr. Ruscilli acknowledges that absent imposing unjustified and  
16 burdensome requirements on Adelphia and forcing Adelphia to divulge  
17 competitively sensitive information, it is impossible for BellSouth to distinguish  
18 between a virtual NXX call and a call that is undisputedly local. (Ruscilli Direct at  
19 pages 5-6). Given this admission, there are two elements of BellSouth's position  
20 regarding Issue 2 that should be addressed. First, it is impossible for BellSouth  
21 to distinguish between virtual NXX and undisputedly local calls. Second,  
22 BellSouth's "plan" to artificially segregate these calls is flawed and  
23 anticompetitive. I will deal with each issue separately.

1 **Q. WHY IS IT IMPORTANT FOR THE TRA TO RECOGNIZE THAT BELL SOUTH**  
2 **IS UNABLE TO DISTINGUISH BETWEEN A VIRTUAL NXX CALL AND AN**  
3 **UNDISPUTEDLY LOCAL CALL?**

4 A. It is significant, because BellSouth's acknowledgement that the two types of calls  
5 are indistinguishable completely corroborates the arguments I set forth in my  
6 direct testimony with respect to the nature of these calls - the economic reality is  
7 that both kinds of calls are functionally identical, and should be treated as such.  
8 BellSouth's argument that virtual NXX calls are not subject to reciprocal  
9 compensation, but rather, should be subject to access charges, is not credible  
10 because the calls are handled and processed identically. Mr. Ruscilli even  
11 admits at page 5 of his testimony that they (BellSouth) "have no way of knowing"  
12 which calls are virtual NXX calls and which calls are undisputedly local.

13 **Q. DOES BELL SOUTH HAVE A WAY TO DISTINGUISH "...WHICH CALLS ARE**  
14 **LOCAL AND WHICH CALLS ARE LONG DISTANCE."?**

15 A. Yes, it does. They continue to make this distinction on a day-to-day basis by  
16 comparing the NPA/NXX code of the calling and called numbers. If a number is  
17 dialed with a "1+" or to an NXX code that is not associated with a rate center that  
18 would be considered local, then it is a long distance call. If the call is to a NXX  
19 associated with the same rate center as the calling party's number, then it is a  
20 local call. BellSouth should not attempt to change this historical practice of rating  
21 and routing calls to justify its position on virtual NXX calls.

22 **Q. IF BELL SOUTH'S TRADITIONAL TREATMENT OF VIRTUAL NXX CALLS**  
23 **MEANS THAT THEY ARE TREATED JUST AS ANY OTHER LOCAL CALL,**

**ON WHAT DO THEY BASE THEIR ARGUMENT THAT SUCH CALLS  
SHOULD BE TREATED DIFFERENTLY GOING FORWARD?**

A. BellSouth bases its arguments entirely on how Adelphia treats the call on the Adelphia side of the POI. As the TRA is aware, Adelphia is responsible for terminating the call, not BellSouth. BellSouth's operational responsibility comes to an end at the POI, for calls terminated to an Adelphia customer. At the POI demarcation, Adelphia assumes all operational responsibility for every call terminated to an Adelphia customer, regardless of the physical location of its customer. From the POI, it is entirely up to Adelphia to decide, based on the efficient use of its network, how to terminate calls to its customers. Given this transfer of operational responsibility at the POI, BellSouth is not impacted in any way based on the manner in which Adelphia chooses to terminate the call.

**Q. IS THERE ANY JUSTIFICATION FOR BELL SOUTH'S PROPOSAL TO TREAT  
THESE VIRTUAL NXX CALLS DIFFERENTLY THAN ALL OTHER LOCAL  
CALLS?**

A. No. If BellSouth were required to handle a virtual NXX call differently than an undisputedly local call, or if BellSouth could show that a virtual NXX call caused them to incur greater costs than an undisputedly local call, the BellSouth argument may have some merit, and there may be some basis for treating the two types of calls differently. In the absence of such evidence, and given BellSouth's admission that such calls are indistinguishable, BellSouth's position that such calls should be treated differently should be rejected.

1 **Q. BELLSOUTH CLAIMS TO HAVE A METHOD WHEREBY SUCH CALLS**  
2 **COULD BE SEPARATELY IDENTIFIED. (RUSCILLI DIRECT AT 12-13)**  
3 **PLEASE COMMENT.**

4 A. Establishing new internal systems in an attempt to avoid reciprocal compensation  
5 on these calls is not in the public interest. While it is true that the BellSouth  
6 system would also result in BellSouth not charging CLECs reciprocal  
7 compensation, BellSouth has already noted that it has only a limited number of  
8 FX lines. As such, the offer to forego reciprocal compensation for these lines is  
9 akin to offering CLECs the sleeves from its vest.

10 As I have discussed, BellSouth has acknowledged that such calls are  
11 treated and handled no differently than other local calls. The distinction  
12 BellSouth seeks to create through this requirement is therefore artificial and has  
13 no functional or cost basis. The requirement would also place a huge burden on  
14 CLECs, requiring them to set up systems to identify and track numbers and to  
15 then report such numbers to BellSouth. To accomplish this, Adelphia would be  
16 forced to expend considerable efforts and resources to undo the automated  
17 billing systems that have served as the basis for the design of modern switches.  
18 Adelphia would be required (under BellSouth's plan) to incur these costs in the  
19 absence of any evidence that such costs are necessary.

20 **Q. DOES THE PLAN PROPOSED BY BELLSOUTH APPLY TO JUST FX**  
21 **CUSTOMERS AND NUMBERS OR TO ALL SERVICES THAT PROVIDE THIS**  
22 **FUNCTIONALITY TO CONSUMERS?**

1 A. BellSouth's plan only applies to its FX service. There is evidently no attempt on  
2 the part of BellSouth to use this "fix" to prevent its billing system from charging  
3 CLECs for calls to EAS numbers, MAC calling areas, Remote Call Forwarding  
4 numbers, Extended Reach Service customers or to the interstate local calls. It  
5 appears that BellSouth is focusing on its FX service because virtual NXX calls  
6 are a competitive response to that particular service. As such, the plan is  
7 anticompetitive and discriminatory.

8 **Q. OTHER THAN THE PROBLEMS YOU MENTIONED ABOVE, ARE THERE**  
9 **OTHER DETRIMENTAL ASPECTS OF BELL SOUTH'S PROPOSAL?**

10 A. Yes. This requirement would provide BellSouth -- Adelphia's competitor -- with  
11 important information about Adelphia's customers. New entrants should never  
12 be required to provide such sensitive information to the incumbent provider, as it  
13 would help BellSouth to identify and then target Adelphia's customers in effort to  
14 maintain its monopoly in Tennessee.

15 BellSouth's proposal should be rejected. It is neither necessary nor  
16 prudent given BellSouth's failure to show that such calls are treated or handled  
17 differently from any other local call, and would likely have a negative impact on  
18 the development of a competitive local market in Tennessee.

19 **Q. MR. RUSCILLI NOTES THAT CLECS MAY DESIGNATE THEIR OWN LOCAL**  
20 **CALLING AREAS. (RUSCILLI DIRECT AT 11) HOW WOULD THAT IMPACT**  
21 **THIS DISCUSSION OF RECIPROCAL COMPENSATION?**

22 A. Mr. Ruscilli is correct. CLECs could avoid this dispute by establishing LATA-wide  
23 or even state-wide local calling areas. In such a case, all calls originated by

1 BellSouth customers and terminated to the CLEC would be considered local and  
2 BellSouth would pay reciprocal compensation.

3 **Q. IS THIS A REASONABLE SOLUTION TO THE DISPUTE?**

4 A. No. The more reasonable approach, from a consumer perspective, is to mirror  
5 the local calling areas of the incumbent local exchange companies. To do  
6 otherwise would confuse consumers.

7 **Q. MR. RUSCILLI STATES THAT "THE FCC HAS MADE IT CLEAR THAT**  
8 **TRAFFIC JURISDICTION IS DETERMINED BASED UPON THE ORIGINATING**  
9 **AND TERMINATING END POINTS OF A CALL, NOT THE NPA/NXXS OF THE**  
10 **CALLING OR CALLED NUMBER." (RUSCILLI DIRECT AT 8) IS THIS**  
11 **CORRECT?**

12 A. Mr. Ruscilli is correct that the FCC has at times applied the end-to-end analysis  
13 to determine jurisdiction, but I think that misses the point. There is a difference  
14 between the jurisdiction of a call and the regulatory treatment of a call. The D.C.  
15 Circuit underscored this view in its decision vacating the *ISP Order*.<sup>1</sup> In  
16 determining that ISP-bound traffic was not subject to reciprocal compensation  
17 under Section 251(b)(5), the FCC had applied the end-to-end analysis to  
18 determine the jurisdictional nature of traffic. The court vacated this decision,  
19 concluding that "[h]owever sound the end-to-end analysis may be for  
20 jurisdictional purposes, the Commission has not explained why viewing [ISP-

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<sup>1</sup> Before the FCC; Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68; released February 26, 1999; hereinafter referred to as the "*ISP Order*".

1 bound calls] as continuous works for purposes of reciprocal compensation.”<sup>2</sup> In  
2 other words, the fact that a call may be interexchange or even jurisdictionally  
3 interstate under an “end-to-end” analysis does not mean that the call is not  
4 treated as a local call and that reciprocal compensation is not paid on the call.

5 As such, Mr. Ruscilli’s testimony suggesting that calls to different calling  
6 areas are not local and therefore not subject to reciprocal compensation is clearly  
7 wrong.

8 **Q. ARE YOU SUGGESTING THAT THE COURT’S RULING ON THIS ISSUE IS**  
9 **FINAL AND THAT THE FCC’S END-TO-END APPROACH IS NO LONGER**  
10 **VALID?**

11 A. No. But the Court did vacate the *ISP Order* and remand it to the FCC.  
12 Specifically, the Court stated, “[b]ecause the Commission has not provided a  
13 satisfactory explanation why LECs that terminate calls to ISPs are not properly  
14 seen as ‘terminat[ing] ... local telecommunications traffic,’ and why such traffic is  
15 ‘exchange access’ rather than ‘telephone exchange service,’ we vacate the ruling  
16 and remand the case to the Commission.”

17 **Q. MR. RUSCILLI QUOTES ORDERS FROM VARIOUS STATES TO SUPPORT**  
18 **BELLSOUTH’S POSITION. (RUSCILLI DIRECT AT 13-19) PLEASE**  
19 **COMMENT.**

20 A. Obviously, different state Commissions are free to establish different standards  
21 relating to interconnection agreements. In my opinion, none of the decisions  
22 cited by Mr. Ruscilli should be considered a reasonable basis for concluding that

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<sup>2</sup> *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

1 virtual NXX calls in Tennessee are ineligible for termination compensation. As I  
2 noted above, I strongly encourage the TRA to decide this issue based on the  
3 evidence presented in this case, including the evidence I presented in my direct  
4 testimony and BellSouth's acknowledgement that there is no identifiable  
5 operational or cost-based difference between virtual NXX and undisputedly local  
6 calls. Other state Commission's are obviously addressing and re-addressing this  
7 issue at this time, and while reviewing other Commission actions may be  
8 somewhat instructive, there appears to be no consensus as yet with respect to  
9 this issue. The fact remains that under the virtual NXX framework, BellSouth's  
10 cost and operational responsibilities do not differ from when the call is  
11 undisputedly local, and therefore, no differentiation is justified.

12 **Q. MR. RUSCILLI STATES THAT BELLSOUTH WOULD PAY RECIPROCAL**  
13 **COMPENSATION ON CALLS FROM TENNESSEE TO OTHER STATES,**  
14 **SUCH AS NEW YORK. (RUSCILLI DIRECT AT 8) IS THIS CORRECT?**

15 A. No. BellSouth is only responsible for getting the call to the appropriate POI in  
16 Tennessee. Adelphia is then responsible for terminating the call. Mr. Ruscilli  
17 seems to suggest that if the call were to terminate in New York that BellSouth  
18 would incur the cost of transporting that call to New York. This is simply wrong.

19 **Q. WOULD ADELPHIA USE THE VIRTUAL NXX FUNCTIONALITY FOR**  
20 **INTERSTATE CALLS AS SUGGESTED BY BELLSOUTH?**

21 A. No. As Adelphia has stated in several arbitrations to date, this functionality is  
22 being offered on an intra-LATA basis only. Virtual NXX is not available for inter-  
23 LATA or interstate calling.



**Q. ARE YOU FAMILIAR WITH HOW ANY OTHER ILECs HAVE BEEN ADDRESSING THIS ISSUE IN THEIR AGREEMENTS WITH CLECs?**

A. Yes. I understand that Verizon has agreed to pay intercarrier compensation to CLECs for all locally dialed traffic, including traffic destined for virtual NXXs used by ISPs, provided that the CLECs pick up the traffic at Verizon's tandem that serves the local area in which the traffic originates. Verizon has agreed to this type of arrangement in situations where the parties have also agreed to a reduced reciprocal compensation rate for traffic that is substantially out of balance.

**Q. WHY IS VERIZON'S AGREEMENT TO COMPENSATE CLECs FOR VIRTUAL NXX TRAFFIC IMPORTANT?**

A. It is important because these agreements clearly recognize that compensation is due to CLECs for terminating this traffic. As shown in my direct testimony, CLECs provide the service and incur the costs to deliver this traffic and intercarrier compensation is thus appropriate. The Verizon agreements also show that market-based solutions to this dispute are possible and preferable to regulatory intervention. Verizon's solution contrasts starkly with BellSouth's proposal in which BellSouth's seeks to charge Adelphia for a service that Adelphia is providing to BellSouth's end-users. Unlike Verizon's market-based solution, adopting BellSouth's language will completely reverse the economic incentives that are currently in place for CLECs to compete with BellSouth's FX and FX-like services.

1   **Q.    IN CLOSING, AND IN RESPONSE TO THE POINTS RAISED BY MR.**  
2       **RUSCILLI, CAN YOU CONTRAST THE POSITIONS OF THE PARTIES ON**  
3       **THIS REMAINING ISSUE?**

4    A.   Yes. Let's look at the pros and cons of utilizing virtual NXX codes in Tennessee,  
5       and continuing to treat those calls as local. The pros are as follows, (1) provides  
6       CLEC customers with a local presence in additional local calling areas; (2) allows  
7       business expansion in the short-run while businesses build-out their facilities  
8       over time; (3) provides ISPs with a cost-effective way to provide local dial-up  
9       Internet service to customers throughout the state without having to have offices  
10      in every local calling area; (4) provides consumers with efficient, low-cost dial-up  
11      access to the Internet; (5) treating these calls as local is consistent with the way  
12      BellSouth treats its own FX service, EAS, MAC calling, Remote Call Forwarding,  
13      Extended Reach Service, and certain interstate calls; and (6) this service  
14      provides a competitive alternative to the FX services provided by BellSouth.

15   **Q.    WHAT ARE THE NEGATIVE CONSEQUENCES OF PROVIDING VIRTUAL**  
16       **NXX SERVICE IN TENNESSEE?**

17   A.   I don't believe there are any negative consequences associated with providing  
18       this service. BellSouth has not provided any evidence that these calls cost it any  
19       more to deliver than other local calls. Further, BellSouth has not shown that the  
20       use of virtual NXX codes is improper, illegal or in any way harmful to the public  
21       interest. As such, there is no justification for denying Adelphia reciprocal  
22       compensation for these calls and there is no justification for charging originating

1 access charges. It is indisputable that Adelphia is providing service by  
2 terminating calls that are originated by BellSouth customers.

3 BellSouth's position in this case derives from the fact that CLECs have  
4 been successful in attracting customers with this service. BellSouth can compete  
5 for these customers as well. The TRA should not allow BellSouth to use the  
6 regulatory process to impede the development of competition in the local market.

7 **Q. ARE THERE NEGATIVE CONSEQUENCES OF ADOPTING BELL SOUTH'S**  
8 **PROPOSED TREATMENT OF THESE CALLS?**

9 A. Yes. Denying intercarrier compensation and imposing access charges would  
10 make it uneconomic for Adelphia to offer this service. Consequently, if Adelphia  
11 and the ISP continue to serve areas currently served through virtual NXX  
12 arrangements, the cost of Internet access would increase for consumers. ISPs  
13 would more likely decide not to use Adelphia and would likely use BellSouth's  
14 services -- thereby eliminating competition in this area of the local market. These  
15 results -- increased costs for consumers and eliminating competitive alternatives  
16 -- are not in the public interest.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes, it does.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 7<sup>th</sup> day of February, 2001.

Guy Hicks, Esq.  
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Henry Walker w/permission